

Date: January 3, 2012

Item No. 5

File No. \_\_\_\_\_

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Approval of Task Force Annual Report to Board of Supervisors**
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Completed by: Chris Rustom

Date: Dec. 22, 2011

**\*This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

\*\* The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

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**SUNSHINE ORDINANCE TASK FORCE  
2010/2011 ANNUAL REPORT**  
to  
**CITY AND COUNTY OF SAN FRANCISCO  
BOARD OF SUPERVISORS**

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The San Francisco Sunshine Ordinance Task Force submits this 2010/2011 annual report to the Board of Supervisors pursuant to San Francisco Administrative Code Section 67.30(c).

**SUNSHINE ORDINANCE**  
*San Francisco Administrative Code Section 67*

The Sunshine Ordinance is San Francisco's open government law, enacted in 1993 by the Board of Supervisors and former Mayor Frank Jordan. San Francisco voters amended and approved the current version of the Ordinance in November 1999 as Proposition G.

The Ordinance is based on the California Public Records Act and is intended to ensure and broaden the public's access to government guaranteed by the state law. San Francisco voters enacted the law to assure public officials conduct the people's business in full view of the public and the people remain in control of their government. (See SF Admin. Code Sec. 67.1.)

**SUNSHINE ORDINANCE TASK FORCE**

The Sunshine Ordinance Task Force is established pursuant to Section 67.30 of the Sunshine Ordinance to promote transparency and accountability in City government.

**Members**

The Task Force consists of 11 seats for voting members and two seats for non-voting members.

Current voting members are Chair Hope Johnson, Vice Chair Bruce Wolfe, Sue Cauthen, Hanley Chan, Jay Costa, Richard Knee, Suzanne Manneh, David Snyder, Allyson Washburn, and Jackson West. James Knoebber resigned from Seat 6 in October 2011, leaving one voting position currently unfilled.

Voting members are appointed by the Board of Supervisors pursuant to requirements outlined in the Sunshine Ordinance, and appointments receive Mayoral approval. Voting members serve two year terms without pay or expense reimbursement. There is no term limit for serving on the Task Force.

The two non-voting Task Force seats are designated for ex-officio members from the offices of the Mayor and the Clerk of the Board of Supervisors. These seats are currently vacant. The offices of the Mayor and Clerk of the Board of Supervisors have failed for over a year to designate their respective Task Force members as required by Section 67.30(c) of the Sunshine Ordinance.

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## **Responsibilities**

The Task Force protects the public interest in open government and performs the duties outlined in the Sunshine Ordinance. It monitors the effectiveness of the Ordinance and recommends ways to improve it. The goal is to maximize public access to all City records and information, maximize public access to all City meetings, and help public officials, employees, and entities find operationally and economically efficient and effective ways to meet open government requirements.

The Task Force is responsible for determining whether a record, or any part of that record, is public and for hearing public complaints alleging violations of the Sunshine Ordinance. (See SF Admin. Code Sec. 67.21(e).)

## **Meetings and Changes to Schedule**

Regularly scheduled Task Force meetings are currently held on the fourth Tuesday of each month at 4:00 p.m.

At the request of members of the public, the Task Force recently approved changing its regular meeting day to Wednesday to discontinue the practice of meeting at the same time as the Board of Supervisors.

## **Standing Committees and New Committees**

The Task Force has four established committees: Complaint, Compliance & Amendments, Education, Outreach & Training, and Rules.

The Task Force recently approved the creation of a new Technology Committee. The Technology Committee will work with City departments to maximize public access to information through technology and review and make recommendations to the Task Force on matters related to record retention policies, production of public information stored electronically, video broadcasts of public meetings, development of databases for Task Force documents, and other technology-related matters.

## **Administrator**

The Task Force is assisted full time by an Administrator from the office of the Clerk of the Board of Supervisors pursuant to Sunshine Ordinance Section 67.31. The Administrator receives complaints related to the Sunshine Ordinance and assists the public in resolving open government issues. The number of complaints received by the Administrator is substantially higher than the number of complaints heard by the Task Force for adjudication, primarily because the Administrator is sometimes able to resolve conflicts between parties. (See attached Administrator's Reports for 2010 and 2011.)

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## **LONG TERM ISSUES**

### **Amendments to the Sunshine Ordinance**

The Task Force has concluded amendments to the Sunshine Ordinance are necessary to clarify sections of the ordinance, ensure broad access to the public as required by the California Public Records Act, and enable the Task Force to further its goals more effectively. The Task Force has worked over the last several years to identify the most needed amendments and will prepare a summary for the Board of Supervisors.

Because the current Sunshine Ordinance was enacted by the voters, proposed amendments to it must go on the ballot for voter approval. Only in specific and narrowly defined instances may the Board and the Mayor amend the Ordinance. The Task Force's goal is for the proposed amendments to appear on the November 2012 ballot.

### **Enforcement of the Sunshine Ordinance**

Section 67.30(c) of the Sunshine Ordinance requires that "the Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts."

Municipal offices with enforcement power under the Sunshine Ordinance are the District Attorney and the Ethics Commission. The District Attorney's office has failed to respond to any referral for enforcement from the Task Force, including a failure to provide any explanation to the original complainant. The Ethics Commission has received over 30 violation referrals from the Task Force since 2006. As detailed in the recent San Francisco Civil Grand Jury report titled 'San Francisco's Ethics Commission: The Sleeping Watchdog,' the Commission has heard only one of those complaints in an open hearing, finding a violation of the Sunshine Ordinance that the Mayor has since failed to address.

Serious enforcement of the Sunshine Ordinance is essential to protecting the public's right to open government. The Sunshine Ordinance is not merely local law; it also encompasses open government rights guaranteed by state law. The Task Force recommends the Board of Supervisors take steps to improve enforcement of the Ordinance. This will decrease the growing number of complaints received by the Task Force, decrease the length of Task Force meetings, and improve relations between elected officials and the public. As evidenced by the Occupy movements, the public is becoming increasingly aware of the back room deals and secretive nature corrupting government.

### **Ethics Commission Sunshine Ordinance Regulations**

The Ethics Commission has proposed a set of regulations for handling violations of the Sunshine Ordinance brought to the Commission. The Task Force provided recommendations for changes to these regulations and requested a joint hearing with the Commission to discuss the regulations.

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The Task Force has long been troubled with the way the Commission handles matters referred to it by the Task Force. The Commission has erroneously placed decisions on these matters with staff when the Commission itself should be making the determinations. Commission staff has recommended 18 of the 19 referrals for willful violations of the Ordinance not be heard by the Commission itself, misleadingly characterizing those referrals as "dismissed." Neither the Ethics Commission nor its staff has authority to dismiss a Task Force finding.

In addition, the Ethics Commission would benefit from the hearing experience of the Task Force. The Commission recently changed its proposed regulations after holding its first ever hearing of a Sunshine Ordinance violation referral. Commissioners and staff came to realize their proposed regulations were inadequately drafted due to the Commission's lack of experience with Sunshine-related hearings.

The Chair of the Board of Supervisor's Government Audit and Oversight Committee has announced the committee will schedule a hearing between the Ethics Commission and the Task Force to discuss the proposed regulations. The Task Force strongly recommends the Committee hold this hearing in a timely manner.

## **OTHER ISSUES**

### **Action Minutes**

The office of the Clerk of the Board has overstepped its authority and demanded the Task Force use action minutes rather than detailed minutes to officially document meetings. The Task Force has attempted to negotiate a compromise by requesting the addition of details sufficient to allow review for Sunshine Ordinance precedent and previous findings, but the Clerk continues to interfere with the Task Force's own administrator's preparation of minutes as requested by Task Force members.

Action minutes are simply a listing of the vote on a motion and cannot be used for a quasi-judicial body. The Task Force does not conduct business in the same way as the Board of Supervisors and its committees. It is a quasi-judicial body that receives specific testimony and evidence from each complainant, respondent, and persons supporting either party. Such hearings also include public comment on compliance with open government by the City departments and elected officials. All of the foregoing and the resulting finding for the complainant or the respondent go into a file that is at times quite voluminous. In addition, the docket must be available for review, serving as "case law" for the Sunshine Ordinance for the public, public officials, City departments, and municipal offices with enforcement power.

Task Force members are volunteers, serving long hours without compensation. Members have the assistance of only one staff person. Action minutes require even more time from these volunteers because these minutes do not provide detail adequate enough to even distinguish one complaint hearing from another. In addition, appointed members of boards, commissions, and task forces are held responsible for the actions and work product of their respective board, commission, or task force, and it is self-evident members would know which style of minutes are useful and, therefore, should be in control of the style of minutes prepared.

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## **Line Item Budget**

The Task Force is currently funded under the City's general fund. The Task Force encourages the Board of Supervisors to research establishing a line item budget for Task Force operations. This will clarify the amount of resources needed to manage the Task Force as required by law and help to inform future decisions regarding the Task Force's annual budget.

There are other quasi-judicial City policy bodies that operate much like the Task Force, including the Rent Board, Ethics Commission, and Appeals Board, all of which have budgets and staffs far larger than those of the Task Force.

The Task Force and its staff continually seek ways to improve operational and economic efficiencies, both at meetings and in record keeping. At the same time, the Task Force strongly believes that maintaining staffing, equipment, supplies, and facilities is paramount to complying with the voter-mandated Sunshine Ordinance law. (See, for example, Section 67.31 requiring that "[t]he Clerk of the Board of Supervisors shall provide a full-time staff person to perform administrative duties for the Sunshine Ordinance Task Force and to assist any person in gaining access to public meetings or public information. The Clerk of the Board of Supervisors shall provide that staff person with whatever facilities and equipment are necessary to perform said duties.")

## **Limiting City Attorney Hours**

The Task Force remains deeply concerned about the inappropriate and continual limiting of the hours of assistance from the City Attorney's Office.

Section 67.30(a) of the Sunshine Ordinance requires a deputy city attorney be assigned to "serve solely as legal advisor and advocate to the Task Force," maintaining an ethical legal wall with any person or office that may have a conflict of interest with Task Force work. Citing budgetary constraints, the City Attorney is severely restricting the number of hours a deputy city attorney is available to work with the Task Force. The number of hours budgeted for 2010 was 350 hours per year, approximately seven hours per week. In 2011, that number was reduced to 218 hours, a mere four hours per week.

This is problematic for members of the public, the Task Force, and Task Force committees as they weigh substantive and procedural matters. The Task Force strongly advises the Board of Supervisors to provide adequate funding to enable the City Attorney to comply with 67.30(a) requirements in future fiscal years. In addition, the Task Force urges the Board of Supervisors to review the City Attorney's office practice of billing time in 15 minute increments rather than six minute increments. The 15 minute billing interval allows an attorney to charge a client for 15 minutes of time for a task that requires only four or five minutes, a practice almost never allowed by private sector clients.

## **Televising SOTF Meetings**

For over six years, the Task Force has continued to request live televising and web streaming of its meetings on SFGOVTV and the City's web site. The Task Force has proved a viable, vital resource for the public, and its activities are sufficiently instructive to be a compelling subject for regular broadcast.

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The Board of Supervisor recently amended the San Francisco Campaign and Government Conduct Code to require the Ethics Commission to televise its meetings. This was an important improvement to bring open government policy to Ethics Commission procedure, and the Task Force requests the Board also require all Task Force meetings be televised. This should not be a difficult requirement to meet since the Task Force and its committees meet regularly in hearing rooms equipped with at least one video camera. Discussion of this matter has already begun at the Board's Government Audit and Oversight Committee.

In conclusion, the Task Force urges the Board and the Mayor to keep the Task Force budget at least at its current level, and recognize the Task Force's needs and requirements under the Sunshine Ordinance for full-time staff and resources that will enable it to continue providing services to the City and the public.

Respectfully submitted,

Hope Johnson, Chair

Bruce Wolfe, Vice-Chair

Richard A. Knee, Immediate Past Chair

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## **Sunshine Ordinance Task Force Complaint Committee 2010-11 Annual Report**

The Complaint Committee determines whether the Task Force has jurisdiction on a given complaint, helps complainants focus their complaints, monitors the complaint process and makes recommendations to the Task Force regarding how complaints should be handled.

The Complaint Committee comprises three members: Chair Richard A. Knee, Sue Cauthen and Allyson M. Washburn.

The Complaint Committee normally has normally met on the second Tuesday of each month at 3:30 p.m. As this Annual Report is being drafted, the Task Force is considering suspending the Complaint Committee because (1) the Task Force wants to create a Technology Committee, and this would overburden members and staff if the Complaint Committee were kept active; and (2) the full Task Force could easily handle the issues that go before the Complaint Committee.

In fiscal year 2010-11, the Complaint Committee heard 23 complaints. It should be noted that the full Task Force held hearings on many more complaints than these. This is because the complaint underlying a particular hearing may not necessarily come before the Complaint Committee. This happens if jurisdiction is not contested. The following matters came before the Complaint Committee in FY 2010-11:

### **July, 2010**

- Case #10026, Ray Hartz vs. City Attorney, public-record complaint.
- Case #10030, Michael Wright vs. Human Services Agency, public-meeting complaint.
- Case #10034, Nick Pasquariello vs. Department of Technology, public-record complaint.

### **August, 2010**

- Case #10036, Tomas Picarello vs. Single Room Occupancy Hotel Safety & Stabilization Task Force, public-meeting complaint.

### **September, 2010**

- Case #10041, William and Robert Clark vs. Mayor, Board of Supervisors and Arts Commission, complaint regarding Commission fee-setting authority legislation.
- Case #10045, Randall Evans vs. Mo' Magic, public-record complaint.
- Case #10046, Joseph Victor Lagana vs. Police Department, public-record complaint.

### **October, 2010**

- Case #10035, Nick Pasquariello vs. Bay Area Video Coalition, public-record complaint.
- Case #10047, Kellee Lanza vs. District Attorney, public-record complaint.

### **November, 2010**

- Case #10052, Kai Wilson vs. North of Market/Tenderloin Community Benefit District, public-record complaint.

### **December, 2010**

- Case #10057, Rita O'Flynn vs. Controller's Whistleblower Program, public-record complaint.



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- Case #10060, Charles Pitts vs. Local Homeless Coordinating Board, public-meeting complaint.
- Case #10061, William and Robert Clark vs. City Attorney, complaint on fee charged to Arts Commission to discuss public-record requests.

### **January, 2011**

- Case #10065, Debra Benedict vs. San Francisco Bar Association, public-meeting complaint.
- Case #10071, Jason Grant Garza vs. Haight Ashbury Free Clinics, public-record complaint.

### **February, 2011**

- Case #10067, Charles Pitts vs. Local Homeless Coordinating Board, public-information complaint.

### **March, 2011**

- Case #11003, Matt Smith vs. District Attorney, public-record complaint.

### **April, 2011**

- Case #11009, Jason Grant Garza vs. San Francisco Community Clinic Consortium, public-record complaint.

### **May, 2011**

- Case #11027, Cynthia Carter vs. Municipal Transportation Agency, public-record complaint.
- Case #11034, Frank McDowell vs. Municipal Transportation Agency, public-record complaint.

### **June, 2011**

- Case #11035, Marlon Crump vs. Police Commission, public-meeting and public-record complaints.
- Case #11038, Anonymous vs. Taxi Advisory Council, public-meeting complaint.
- Case #11041, Christine Harris vs. Police Department, civil-, constitutional- and human-rights complaint.

The Complaint Committee would be aided immeasurably by the presence of a Deputy City Attorney at our meetings. Economy moves within the City Attorney's office have eliminated our ability to rely on a legal voice to assist us as we deliberate.

Respectfully submitted,

Richard A. Knee, Chair

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## **Sunshine Ordinance Task Force Compliance & Amendments Committee 2011 Annual Report**

The Compliance & Amendments Committee (CAC) takes the lead in monitoring the effectiveness of the Sunshine Ordinance and in proposing revisions thereto. In addition, the CAC follows up on Orders of Determination that the Task Force issues when finding violations of the Ordinance, investigating whether the Orders have been met and recommending when necessary that the Task Force refer cases of willful failure to comply with the Orders to entities empowered to impose penalties.

The CAC comprises five members: Chair Allyson Washburn, Hope Johnson, Richard Knee, David Snyder, and Bruce Wolfe. The composition is unchanged from our last annual report.

The CAC normally meets the second Tuesday of each month at 4 p.m.

### **Hearings on Orders of Determination**

From July 2010 to June 2011, the CAC followed up on 11 Orders of Determination that the Task Force issued after finding violations of the Sunshine Ordinance:

#### **July 2010**

##### *Svetlana Ptashnaya v the Dept. of Adult and Aging Services (10018)*

Finding of noncompliance with Order of Determination; referred back to the Task Force for violation of Sections 67.21(c) and 67.24(c)(7) as well as possible referral to an enforcement agency such as the Ethics Commission, The State Attorney General, the District Attorney and/or the Board of Supervisors

##### *Suzanne Dumont v the Recreation and Parks Department (10022)*

Finding of compliance with Order of Determination

#### **August 2010**

##### *Nick Pasquariello v the Department of Technology (10013)*

Finding of noncompliance with Order of Determination; referred back to the full Task Force with a recommendation that it be forwarded to the Ethics Commission because of willful failure to comply with Order of Determination

##### *Ray Hartz v the Police Commission (10025)*

Finding of noncompliance with Order of Determination; referred back to the full Task Force to provide another opportunity for the Police Commission to demonstrate that the Police

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Commission's Index of Records enables members of the public to learn the types of information and documents maintained by and for the Commission per Section 67.29 and if the Police Commission does not satisfy then to refer to an enforcement agency for willful failure to comply.

### **September 2010**

*Michael Wright v. the Human Services Agency* (10030)

Finding of noncompliance with Order of Determination; matter referred back to the full Task Force with a recommendation that it be forwarded to the Ethics Commission for enforcement

### **November 2010**

*Kellee Lanza v the District Attorney's Office* (10047)

Matter referred back to the full Task Force to determine compliance with Order of Determination

### **February 2011**

*Kai Wilson v. North of Market/Tenderloin Community Benefit District* (10052)

Finding of compliance with Order of Determination

*Dorian Maxwell v. SF Municipal Transportation Agency* (10059)

Finding of noncompliance with Order of Determination; matter continued to March 2011 CAC meeting because the Order of Determination had not yet been met.

*Debra Benedict v. Mayor's Office of Economic & Workforce Development* (10063)

Finding of noncompliance with Order of Determination; referred back to the full Task Force with a recommendation that it be forwarded to the Ethics Commission for disciplinary action because of inaction on the Order of Determination

*William and Robert Clark v. Arts Commission* (10069)

Finding of noncompliance with Order of Determination; referred back to the full Task Force with a recommendation that it be forwarded to the Ethics Commission for disciplinary action because the Order of Determination was not met within the prescribed period

### **March 2011**

*Dorian Maxwell v. SF Municipal Transportation Agency* (10059)

Continued hearing on the status of the Order of Determination; finding of noncompliance with the Order; matter referred back to the full Task Force with a recommendation that SF Municipal Transportation Agency Executive Director and CEO Nathaniel P. Ford, Sr. be found in violation of Section 67.33 for failure to instruct MTA employees on Sunshine requirements and the matter be forwarded to the Ethics Commission.

*William J Clark and Robert J Clark v. Arts Commission* (10074)

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Finding of noncompliance with Order of Determination; referred back to the full Task Force with a recommendation for referral to the Ethics Commission for non-compliance with the Order of Determination

### **Review of Ethics Commission's Proposed Regulations Changes**

The Compliance and Amendments Committee completed a thorough review of the Ethics Commission staff's August 17, 2010 draft "Regulations for Complaints Alleging Violations of the Sunshine Ordinance" (Staff's Draft) in May 2011. Suggested changes, many of which reflected extensive public input at seven meetings of the Committee when the matter was heard, were forwarded to the Commission in June 2011.

The CAC would be aided immeasurably by the presence of a Deputy City Attorney at our meetings. Economy moves within the City Attorney's office have eliminated our ability to rely on a legal voice to assist us as we deliberate.

Respectfully submitted,

Allyson Washburn, Chair

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## **Sunshine Ordinance Task Force Education, Outreach & Training Committee 2010-11 Annual Report**

The Education, Outreach & Training Committee (EOTC) is responsible for educating City agencies and the general public about the provisions of open government laid forth by the Sunshine Ordinance. It also makes recommendations to the Task Force about matters of outreach and publicity surrounding the Sunshine Ordinance. The committee holds its meetings on the second Thursday of each month at 4 P.M.

The EOTC is currently comprised of two members: Jay Costa (chair) and Suzanne Manneh. Over the past year, Hope Johnson, Hanley Chan, Sue Cauthen, and Marjorie Ann Williams also served on the committee, each of them demonstrating great dedication to upholding and promoting Sunshine in the City of San Francisco.

This year, the EOTC has continued to work with entities that the Task Force has determined to be in violation of the Sunshine Ordinance. Specifically, the EOTC ensures that these entities fully understand why the Task Force has found them to be in violation, thereby clarifying how violations can be avoided in the future. Some of the Orders of Determination on which the EOTC has followed up include those on complaints filed by Barry Taranto against the MTA Board of Directors, Nick Pasquariello against the Department of Technology, Thomas Picarello against the SRO Task Force, Ray Hartz against the Library Commission, William Clark against the City Attorney's Office, Charles Pitts against the Local Homeless Coordinating Board, and Jason Grant Garza against the Haight-Ashbury Free Clinic.

The outcome of these hearings has generally been quite successful, with most respondents expressing a clear understanding of why they were found to be in violation and making a commitment to changing their procedures so as to be compliant with the Sunshine Ordinance going forward. Two notable examples of this were the hearings concerning the Department of Technology and the SRO Task Force.

In an effort to spread public awareness about the Sunshine Ordinance, the EOTC has also continued to offer educational presentations about the Ordinance to a diverse array of groups, such as the Coalition for San Francisco Neighborhoods, the Department of Children and Families, and the San Francisco Local Homeless Coordinating Board.

This year, the EOTC has also undertaken several additional efforts to further raise public awareness regarding the Sunshine Ordinance. For example, the committee devoted a great deal of discussion to the possibility of creating a Sunshine Award, which the Task Force would bestow annually upon City agencies outstanding in their compliance with the Sunshine Ordinance. The EOTC also discussed the idea of building a social media presence for the Task Force – for example, creating a Sunshine Ordinance Task Force Facebook page. The extensive preparatory debate and research by the EOTC on each of the aforementioned leaves both ideas in a state of readiness for consideration by the full Task Force. The EOTC has also contacted a variety of San Francisco media outlets, including many ethnic newspapers, in an attempt to garner publicity for the Sunshine Ordinance and the topic of open government in San Francisco.

The EOTC has encountered several problems over the past year that are worthy of note. First of all, we continue to be hampered when a knowledgeable representative from the respondent City agency or other group does not attend our meetings, as is required under Section 67.21(e) of the Sunshine Ordinance. The absence of such a representative makes it impossible to pursue voluntary compliance with Task Force Orders of Determination.

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Secondly, as stated previously, the EOTC would be aided immeasurably by the presence of a Deputy City Attorney at our meetings. The Deputy City Attorney assigned to the Task Force does not currently attend committee meetings as a result of cutbacks by the City Attorney's Office. The presence of the Deputy City Attorney at our meetings would allow the EOTC to rely on a legal voice in its deliberations.

Finally, the EOTC has encountered several instances wherein a City agency has refused to comply with an Order of Determination by the Task Force on the grounds that the City Attorney's office – or the City Attorney's office by proxy of its Good Government Guide – was the entity that originally advised the agency to proceed in the manner that the Task Force ultimately found to be in violation of the Sunshine Ordinance (for example, Ray Hartz against the Library Commission). It is troubling that there have been instances in which the City Attorney has given advice that, from the view of the Task Force, runs counter to the Sunshine Ordinance. It is even more troubling that some of this advice comes in the form of a widely consulted publication such as the Good Government Guide. Going forward, it is essential that discrepancies between reference materials such as the Good Government Guide and the Sunshine Ordinance be rooted out and eliminated, and that the Ordinance be upheld as the ultimate source of authority on issues of open government in the City of San Francisco.

Despite these problems, the EOTC is encouraged by its many successes and greatly looks forward the opportunity to continuing to work for a more open government in our City in the year to come.

Respectfully submitted,

Jay Costa, Chair